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MAILED

AUG 03 2010

OFFICE OF PETITIONS

In re Application of :
Teunis Adrianus Kassenaar :
Application No. 10/549,647 : **DECISION ON REQUEST FOR REFUND**
Filed: September 20, 2005 :
Attorney Docket No. 22173-70410 :

This is a decision on the Request For Refund filed July 19, 2010.

The request is **DISMISSED**.

A Petition for Revival of Application for Patent abandoned unintentionally under the provisions of 37 CFR 1.137(b) accompanied with the issue and publications were submitted on March 24, 2010. A decision granting the petition was mailed on June 15, 2010.

Applicant now files the above request for refund of the petition fee (\$1,620.00) and asserts that counsel never received the Notice of Allowance mailed September 18, 2009, even though the Notice was mailed to the correct address. Applicant is encouraged to note MPEP 607.02 which states:

Under 35 U.S.C. 42(d) and 37 CFR 1.26, the Office may refund: (1) a fee paid by mistake (e.g., fee paid when no fee is required); or (2) any fee paid in excess of the amount of fee that is required. See *Ex parte Grady*, 59 USPQ 276, 277 (Comm'r Pat. 1943) (the statutory authorization for the refund of fees under the "by mistake" clause is applicable only to a mistake relating to the fee payment).

When an applicant or patentee takes an action "by mistake" (e.g., files an application or maintains a patent in force "by mistake"), the submission of fees required to take that action (e.g., a filing fee submitted with such application or a maintenance fee submitted for such patent) is **not** a "fee paid by mistake" within the meaning of 35 U.S.C. 42(d).

37 CFR 1.26(a) also states:

The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent

filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee.

Furthermore, MPEP 711.03 (c) states that:

[T]he petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 (“[t]he fees set forth in this section are due on filing the petition”). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(1) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

In view of the above, the request for refund is dismissed as the petition was not paid “by mistake”. Further, applicant admitted the application was abandoned in filing the petition to revive, along with the fee. The time has passed for raising the issue that the holding of abandonment should be withdrawn. Applicant cannot now reasonably assert that the application was not abandoned at this late date, after applicant obtained the benefit of the petition under 37 CFR 1.137(b).

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions